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**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re: Case No. 18-23538 (RDD)

SEARS HOLDINGS CORPORATION, et al.

Chapter 11

Debtors.

**REVISED/SUPPLEMENTAL OBJECTION BY OSTER YORKTOWN PROPERTIES, LLC
TO CURE AMOUNT OF \$22,593.27 WITH RESPECT TO STORE NUMBER 9414
PROPOSED BY TRANSFORM HOLDCO, LLC WITH ITS APRIL 19, 2019 NOTICE OF
ASSUMPTION AND ASSIGNMENT OF ADDITIONAL DESIGNATABLE LEASES**

Oster Yorktown Properties, LLC (hereinafter "Oster"), the landlord of store number 9414 located in Yorktown Heights, New York, objects to the proposed cure amount of \$22,593.27 set forth in Transform Holdco, LLC's April 19, 2019 Notice of Assumption and Assignment of Additional Designatable Leases (Docket Entry 3298) and says:

1. On or about April 13, 1973, Yorktown Green Shopping Center, Inc., as Landlord, and Caldor, Inc., N.Y., as Tenant, entered into a written Indenture of Lease with respect to the shopping center premises described in the Indenture of Lease, namely, Route 118/Downing Drive, Yorktown Heights, New York. A copy of the Indenture of Lease is attached hereto as Exhibit A.

2. The term of the Indenture of Lease commenced on or about October 17, 1974, and

had a expiration date of on or about October 16, 2001.

3. Effective March 17, 1999, Caldor, Inc., N.Y. assigned all of its right, title and interest in the lease to Kmart Corporation.

4. By letter dated January 4, 2001, Kmart Corporation extended the term of the Indenture of Lease for five (5) additional years commencing October 17, 2001 to and including October 16, 2006.

5. By letter dated March 20, 2006, Kmart Corporation extended the term of the Indenture of Lease for five (5) additional years commencing October 17, 2006 to and including October 16, 2011.

6. On or about December 22, 2008, Oster Realty Corp., the successor to Yorktown Green Shopping Center, Inc., assigned all of its right, title and interest under the Indenture of Lease to Oster.

7. By letter dated April 21, 2011, Kmart Corporation extended the term of the Indenture of Lease for five (5) additional years commencing October 17, 2011 to and including October 16, 2016.

8. By letter dated March 16, 2016, Kmart Corporation extended the term of the Indenture of Lease for five (5) additional years commencing October 17, 2016 to and including October 16, 2021.

9. According to the debtors' January 18, 2019 Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in connection with Global Sale Transactions (Docket Entry 1731), the debtors' proposed cure amount for the lease in question was \$53,044.00.

10. On January 25, 2019, Oster filed an objection to the debtors' proposed cure amount of \$53,044.00 with respect to store number 9414, Docket Entry 1853. A copy of the objection, without Exhibits A-C, is attached hereto as Exhibit B.

11. According to Transform Holdco, LLC's April 19, 2019 Notice of Assumption and Assignment of Additional Designatable Leases (Docket Entry 3298), Transform Holdco, LLC's proposed cure amount for the lease in question is \$22,593.27. THIS AMOUNT IS NOT CORRECT.

12. There currently exist financial defaults under the unexpired lease between Oster Yorktown Properties, LLC and Kmart Corporation. Under § 365(b)(1) of the Bankruptcy Code, the lease may not be assumed unless, at the time of assumption, Oster is paid the following amounts:

a.	Unpaid common area maintenance charges for the six months from July 1, 2018 to December 31, 2018: \$47,655.66 - \$25,062.40 =	\$ 22,593.26
b.	Unpaid real estate tax charges: \$315,733.86 - \$67,471.89 =	<u>\$248,261.97</u>
	TOTAL	<u>\$270,855.23</u>

The documents supporting the unpaid common area maintenance charges are attached hereto as Exhibit C, and the documents supporting the unpaid real estate tax charges are attached hereto as Exhibit D.

13. Although the \$270,855.23 represents the amount necessary to cure the debtors' existing defaults under the Indenture of Lease as of April 30, 2019, this amount may increase as a result of additional defaults between April 30, 2019 and the effective date of the assumption of the Indenture of Lease, and Oster reserves the right to increase the required cure amount from \$270,855.23 to an amount that takes into account the required cure amount as of the effective date of the assumption of the Indenture of Lease.

14. In addition, Transform Holdco, LLC's April 19, 2019 notice of assumption and assignment recites, in paragraph 13, that Transform Holdco, LLC, "or an affiliated entity, shall be the relevant Assignee for each Additional Designatable Lease." However, under § 365(f)(2) of the Bankruptcy Code,

The trustee may assign an executory contract or unexpired lease of the debtor **only** if

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

To date, no assurances, much less "adequate" assurances, of future performance by Transform Holdco, LLC, or its unidentified "affiliated entity", have been provided to Oster, which said assurances must meet, among other things, the shopping center requirements set forth in § 365(b)(3) of the Bankruptcy Code.

15. Oster joins in the objections of all other landlords, filed and to be filed, to the extent that such objections are not inconsistent with the objections raised in this objection.

WHEREFORE, Oster Yorktown Properties, LLC respectfully requests that an order be entered (1) determining that the amount necessary to cure the debtors' defaults under its unexpired lease of nonresidential real property with Oster Yorktown Properties, LLC be fixed at \$270,855.23 as of April 30, 2019, 2019, plus the amount of any and all additional defaults that the debtors are required to cure as of the effective date of the assumption of the lease in question, and (2) prohibiting assignment of the Oster lease unless and until the required adequate assurances of future

performance have been provided to Oster.

LASSER HOCHMAN, LLC
Attorneys for Oster Yorktown
Properties, LLC

DATED: May 1, 2019

By: /s/ Richard L. Zucker
RICHARD L. ZUCKER, ESQ.